876.

# SUPREME COURT OF THE UNITED STATES.

## No. 112.

C. C. LATHROP, PL'FF IN ER.,

vs.

CHARLES JUDSON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX


| | | Original. | Print. |
|---|---|---|---|
| Petition | | 1 | 1 |
| Exhibit filed with petition— | Record in case of Judson vs. Lathrop | 3 | 2 |
| " " " | Petition | 3 | 2 |
| | Citation and return | 6 | 3 |
| | Exception | 7 | 4 |
| | Order to appear | 7 | 4 |
| | Judg't on exception | 9 | 5 |
| | Order of appeal and bond | 10 | 5 |
| | Answer | 12 | 6 |
| | Acc't filed with answer | 13 | 7 |
| | Mandate of Supreme Court | 13 | 7 |
| | Affidavit of defendant | 17 | 9 |
| | Supplemental answer | 18 | 9 |
| | Affidavit of def'dt | 20 | 10 |
| | Order and continuance | 21 | 11 |
| | " " | 24 | 12 |
| | Bill of exceptions | 24 | 13 |
| | " " | 25 | 13 |
| | Judgment | 26 | 13 |
| | Rule and return | 27 | 14 |
| | Rule, and judg't thereon | 28 | 15 |
| | Petition of appeal | 29 | 15 |
| | Order of appeal and bond | 30 | 16 |
| | Citation of appeal | 31 | 17 |
| | Bill of exceptions | 32 | 17 |
| | " " | 33 | 18 |

| | Original. | Print. |
|---|---|---|
| Exhibit filed with petition—Bill of exceptions | 34 | 18 |
| " " | 35 | 18 |
| " " | 37 | 19 |
| " " | 38 | 20 |
| Mandate of Sup. Court | 40 | 21 |
| Fi. fa. | 41 | 22 |
| Supplemental petition | 43 | 23 |
| Order and citation | 44 | 23 |
| Exception and plea | 49 | 26 |
| Notice of seizure annexed to do. | 50 | 26 |
| Submission on exception | 50 | 27 |
| Judgment on " | 51 | 27 |
| Answer | 51 | 27 |
| Record referred to in do.—of suit of Lathrop vs. His Creditors | 53 | 28 |
| " " " Petition | 53 | 28 |
| Order on petition | 55 | 29 |
| Advertisement, order | 55 | 29 |
| Appointment of att'y of absent creditors. | 56 | 30 |
| List of absent creditors | 57 | 31 |
| List of creditors in New Orleans | 58 | 32 |
| Proces verbal of meeting of creditors | 59 | 32 |
| Petition to homologate tableau | 66 | 37 |
| Syndic's tableau | 66 | 37 |
| Order and judg't | 69 | 39 |
| Submission of cause | 71 | 40 |
| Opinion of the Court | 71 | 40 |
| Judgment | 73 | 41 |
| Petition for writ of error | 74 | 41 |
| Order granting do | 75 | 42 |
| Bond for writ of error | 76 | 42 |
| Clerk's certificate | 78 | 43 |
| Writ of error | 79 | 44 |
| Citation and service | 81 | 44 |

CHARLES JUDSON
vs.
C. C. LATHROP. } No. 2332.

Pleas and proceedings before the Honorable the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana, at the November Term, 1854, of the said Court, held at the City of New Orleans, on the 16th day of November, 1854.

Be it remembered, that heretofore, to wit, on 6th day of May, 1854, came Charles Judson, by his attorneys, Messrs. Benjamin, Bradford & Finney, and H. D. Ogden, in the Clerk's office of the said Court, and filed a petition, which is in the words and figures following, to wit:

*Petition.*—Filed 6th May, 1854.

To the Honorable the Judges of the Circuit Court of the United States for the 5th Circuit, Eastern District of Louisiana:

The petition of Charles Judson, who is a citizen of the State of New York, residing in the City of New York, respectfully shows: That on or about the 29th April, 1845, he instituted a suit in the then Parish Court, in and for the Parish and City of New Orleans, now the Third District Court of New Orleans, being suit No. 1671 of the docket of the said late Parish Court, against Charles C. Lathrop, who is a citizen of the State of Louisiana, residing in the City of New Orleans. Your petitioner further avers, that on or about the 4th of June, 1851, he obtained a final judgment on appeal to the Hon. the Supreme Court of the State of Louisiana, against the said Lathrop, for the sum of eighteen hundred and ten dollars and fifty cents, with interest thereon, at the rate of five per cent. per annum, from the 2d day of May, 1845, until paid; all of which will more fully appear by reference to the hereunto annexed transcript of the record of said case, made part of this petition. Your petitioner further shows, that said Lathrop has failed to pay any part of said judgment; and the said sum of eighteen hundred and ten dollars and fifty cents, and interest as aforesaid, are still due and owing.

Wherefore your petitioner prays, that the said Charles C. Lathrop be duly cited to appear and answer this petition; and that after due proceedings had, he be condemned to pay your petitioner the aforesaid sum of eighteen hundred and ten dollars and fifty cents, with five per cent. interest thereon from the 2d of May, 1845, till paid, and costs of suit. And your petitioner further prays for all other and further relief.

BENJAMIN, BRADFORD & FINNEY,
H. D. OGDEN, } *Att'ys.*

*Exhibit.*—Filed with petition, 6 May, 1854.

STATE OF LOUISIANA,
*Third District Court of New Orleans:*

CHARLES JUDSON
vs.
C. C. LATHROP.
} No. 16671 Parish Court.

*Petition.*—Filed 29th April, 1845.

To the Honorable the Judge of the Parish Court, in and for the Parish and City of New Orleans:

The petition of Charles Judson, a resident of the City of New York, respectfully shews:

That C. C. Lathrop, having resided some time in the Parish of East Feliciana, in State, carrying on business therein, did, early in the year 1843, terminate his said business, and did remove to the Parish and City of New Orleans, with the intent of carrying on *buiseniss* in said City, and of residing therein. That, to prevent the legal effects of such transfer of residence, and in order that he might be exempt from the jurisdiction of the Court of said City, and contrary to the true interest of the law, said Lathrop made, before the Parish Judge for the Parish of Orleans, a declaration of his intention to remain a resident of said Parish of East Feliciana. Petitioner avers, that if any form and effect ever attached to said declaration, the same has been destroyed by the continued residence of said Lathrop in this Parish, he carrying on commerce. By the judicial confession of said Lathrop, made within the last six months, and by the application of said Lathrop to vote in the municipal elections of this Parish, he being actually voting therein, and by various other acts, whereby the said Lathrop has become a resident of said Parish of Orleans, and subject to the jurisdiction of the Court thereof, he further avers, that said Lathrop is indebted to him in the several sums of money hereinafter set forth, with interest for this, that the said Lathrop, being authorized by the commercial firm of Mr. Judson & Co. to collect certain monies due or becoming due to said firm, did collect and receive, on or about the 10th Jan'ry, 1840, from Richard Cross, of Clinton, Louisiana, four hundred dollars; from Anderson and Bullard, of same place, fifty-four $\frac{90}{100}$ dollars, on or about 5th Nov., 1840; one hundred and thirty-nine dollars, on the 21st April, 1841; two hundred and fourteen dollars, on the 5th June, 1841; and two hundred and fifty dollars, on 13th November, 1841—making the sum of $1,057 $\frac{90}{100}$ dollars. That said Lathrop was also charged with the collection of a note, drawn by Hughes & Flucker, of this State, for the sum of seven hundred and fifty-two dollars $\frac{55}{100}$, due 6th March, 1840, which note was collected

soon after the same fell due—all which monies, so collected, the said Lathrop has appropriated to his own use, and has neglected and *refushed* to pay over the same to those authorized to receive the same.

Petitioner further avers, that since the receipt of said monies by said Lathrop, all the right, title, and interest of the said M. Judson & Co. has passed to your petitioner, in virtue of an adjudication of said claims, made in due course of law, under the bankrupt proceedings in the matter of M. Judson vs. his creditors, in the District Court of the United States, in and for the Eastern District of Louisiana, whereby your petitioner became entitled to demand from said Lathrop the several sums of money by him collected before the bankruptcy aforesaid, and which, although often requested, the said Lathrop has refused to pay over to him. Your petitioner therefore prays, that said Lathrop be cited to answer this petition, and condemned to pay the said several sums of money, amounting in all to the sum of eighteen hundred and ten $\frac{55}{100}$ dollars, with interest on the respective sums, the time the same were by him collected, and costs of suit; and petitioner prays for all other and further relief.

(Signed) W. W. HOFFMAN,
*Att'ny.*

*Citation.*

The State of Louisiana, to Mr. Charles C Lathrop, New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the Clerk of the Parish Court for the City and Parish of Orleans, at New Orleans, in ten days after the service hereof.

Witness, the Honorable Charles Maurian, Judge of the said Court, the 30th day of April, in the year our Lord 1845.

(Signed) VICTOR SERE,
*D'y Clerk.*

CHARLES JUDSON
vs.
C. C. LATHROP. } No. 16671.

*Sheriff's return on back of citation.*

Received, 30th April, 1845, and on the 2d May served copy of the within petition and citation on defendant, by leaving the same at his domicil, No. 15, Canal st., in the hands of Mr. Francis, a free person, above 14 years of age.

Ret'd, 6th May, 1845.

(Signed) L. W. SERE,
*Dy. Sheff., P. C.*

*Exception.*—Filed May 12th, 1845.

CHARLES JUDSON
vs.
CHARLES C. LATHROP. } Parish Court.

The defendant in the above entitled cause, and without admitting the said plaintiff's obligation, declines the jurisdiction of this Honorable Court for this, to wit, that his legal domicil is, and for a long time past has been, in the Parish of East Feliciana, and that he is liable only before the Courts of the Third Judicial District, and in and for said Parish. Wherefore he prays that said plaintiff's petition be dismissed with his costs.

(Signed) THOS. ALLEN CLARKE,
*For Defendant.*

*Order to appear.*

C. JUDSON
vs.
C. C. LATHROP. } No. 16671.

Parish Court, November 28th, 1845.

On motion of M. W. Hoffman, Esq., of counsel for plaintiff, it is ordered that the defendant appear in open Court on Saturday, the 29 inst., at the opening thereof, to wit, 10 o'clock a. m., to answer to such interrogatories as may be submitted to him in this case.

Extract from the minutes.—Clerk's office, New Orleans, November 28th, 1845.

(Signed) VICTOR SERRE,
*D'y Clerk.*

*Sheriff's return on back of order.*

Received 28th Nov., 1845, and on the same day served copy of motion of the defendant in person.

Returned 29th Nov., 1845.

S. LOVETT WALDO.
*D'y Sheriff.*

*Order and Continuance.*

Nov. 29th, 1845.

CHARLES JUDSON
vs.
C. C. LATHROP. } No. 16671.

This case came on this day to be tried before the Court on the

exception of defendant: M. W. Hoffman, Esq., for plaintiff, Thos. Allen Clarke, Esq., for defendant, when the same was continued, by consent of parties, to Saturday next, the 6th of December, proximo.

*Order and continuance.*

December 6th, 1845.

CHARLES JUDSON
vs.
C. C. LATHROP. } No. 16671.

The exception filed in this case by defendant came on this day for trial before the Court: M. W. Hoffman, Esq., for pl'ff, T. A. Clarke, Esq., for defendant, when, for want of witnesses, it is ordered that attachment issue, and that the case be continued until Monday, at 10 o'clock a. m.

*Order—exception maintained.*

Dec'er 20th, 1845.

CHARLES JUDSON
vs.
C. C. LATHROP. } No. 16671.

The exception herein filed came on this day for trial before the Court: M. W. Hoffman, Esq., for pl'ff, T. A. Clarke, Esq., for defendant. After hearing the testimony and argument of counsel, it is ordered, that the exception be maintained, and that the suit be dismissed with costs.

*Motion and bond of appeal.*—Filed Dec'r 29th, 1845.

CHARLES JUDSON
vs.
C. C. LATHROP.

On motion of M. W. Hoffman, of counsel for plaintiff, and, on suggesting to the Court that the plaintiff is dissatisfied with the judgment rendered herein, and is desirous of appealing therefrom to the Supreme Court—

It is ordered, that an appeal be allowed in this case, to the Supreme Court of the State, returnable on the 2d Monday of January, 1846, on plaintiff's giving bond, with Mr. W. Hoffman as security, in the sum of one hundred dollars, conditioned as the law directs.

*Bond.*

Know all men by these presents, that we, Charles Judson and M. W. Hoffman, are held and firmly bound unto C. C. Lathrop, his executors, administrators, and assigns, in the sum of one hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated in the City of New Orleans, on this 29th day of December, in the year of our Lord 1845.

Whereas, the above bounden, Charles Judson, has this day filed a petition of appeal for a final judgment rendered against him in the suit of said Judson vs. C. C. Lathrop, in the Parish Court, for the Parish and City of New Orleans, on the 26th day of December, 1845:

Now, the condition of the above obligation is such that the above-bound C. Judson shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise, that the said M. W. Hoffman, surety, shall be liable in his place.

(Signed) CHARLES JUDSON.
By M. W. HOFFMAN [SEAL.]
M. W. HOFFMAN. [SEAL.]

Signed, sealed, and delivered in the presence of—

*Answer.*—Filed October 6th, 1846.

CHARLES JUDSON
vs.
C. C. LATHROP. } Parish Court of New Orleans.

Now comes the defendant in the above entitled suit, by his counsel, and denies all indebtedness to said plaintiff, as in said plaintiff's petition alleged, or that any right exists in said plaintiff, as is alleged, as assignee of the interests of M. Judson & Co.

And respondent further denies that he is indebted in any manner to said M. Judson & Co.; and he avers that all claims which they ever had have been extinguished by compensation in manner following, viz: for services rendered and expenses incurred by said respondent for and in behalf of said firm, and at their request, according to an account hereto annexed for reference, amounting to $\$1,280\frac{63}{100}$, and also by a note hereto annexed, signed by said M. Judson & Co., dated New York, April 11, 1837, and payable twelve months after date to the order of F. Babel & Co., and by them endorsed in blank for $\$1,783\frac{16}{100}$, credited with $\$713\frac{26}{100}$, paid on 11th June, 1838; wherefore he prays to be hence dismissed with his costs and for general relief.

(Signed) THOS. ALLEN CLARKE,
*For Defendant.*

*Account.*

M. Judson & Co.,

To C. C. Lathrop.....Dr.

| | | |
|---|---|---|
| 1839. | To amount paid expenses trip to Clinton, Dr..... | $30 00 |
| | " " for board in New Orleans from Nov., 1839, to June, 1840, as per agreement... | 300 63 |
| 1840, July 1. | B'lance of salary ..... | 950 00 |
| | | $1,280 63 |

*Receipt for note.*

Received the note and protest filed with answer.
New Orleans, Oct. 28th, 1846.
(Signed) THOS. ALLEN CLARKE.

*Mandate.*—Filed May 12th, 1846.

Supreme Court of the State of Louisiana.

MONDAY, *May* 4, 1846.

The Court met. Present, their Honors George Eustis, Chief Justice; Pierre A. Rost, George R. King, and Thos. Slidell, Associate Justices.

CHARLES JUDSON, App't,
vs. } 5986.
C. C. LATHROP, App'ee.

Appeal from the Parish Court in and for the City and Parish of New Orleans. In this cause the Court this day delivered their opinion in writing, in the words and figures following:

In this case the defendant declines the jurisdiction of the Parish Court of New Orleans, on the ground that his legal domicil is in the Parish of East Feliciana.

The facts established in this case show that, about the year 1840, the defendant came to Louisiana from the north, and soon after entered mercantile business with one Nichols, in the Parish of East Feliciana, under the firm of Nichols and Lathrop. In 1842, the defendant began to live, during a part of the year, in New Orleans, and transacted the business of a commission merchant there, under the firm of C. C. Lathrop and Co. These two houses, composed of the same partners, existed at these respective places until 1843, when Nichols died. But Lathrop still, it seems, continued to have an interest in a store in East Feliciana, and has regularly continued the commission business in New Orleans since the New Orleans house was established. He has spent the principal portion of the year in the City, say eight months, or the business season, and during the remaining four months, being the summer and fall months, he has usually spent his time in East Feliciana, at the house of his

deceased partner's widow. He has kept no furnished house in New Orleans, but has lived at a boarding house. In 1844, he voted at a municipal election in New Orleans, and paid municipal taxes.

The defendant, in Jan'ry, 1843, presented, in the Parish Court of this City, a petition, which was ordered to be filed, in which he declared, "that though he has been a resident of New Orleans for "some time past, his intention is to preserve his domicil in the "Parish of East Feliciana, in which Parish he has been domiciliated." A copy of this declaration was also filed in the Judge's office at East Feliciana.

This suit was brought in April, 1845. The Court below sustained the exception to the jurisdiction, and the plaintiff has appealed.

It is a general rule in civil matters, says our code of practice, that one must be sued before his own judge—that is to say, before the judge having jurisdiction before the place where he has his domicil or residence, (*residence ordinaire ;*) but the rule is subject to several exceptions. The article 166 declares that, if a defendant resides alternately in different Parishes, he must be cited in that in which he appears to have his principal establishment or *or* his habitual residence. If his residence in each appears to be nearly of the same nature, in such a case he may be cited in either, at the choice of the plaintiff, unless he has declared, pursuant to the provision of the law, in which of those Parishes he intended to have his domicil."

It will be observed that, when the party resides alternately in different Parishes, the judicial declaration governs, when the residences appear to be nearly of the same nature. "Si sa residence dans chacune est a peu pris la même." In the present case, the rule as to judicial declaration is not applicable for the residences in the Parishes of East Feliciana and in New Orleans ; cannot be considered as nearly the same in their nature. Two-thirds of the year are spent by the defendant in New Orleans. He passes in the City what is called the business season, the season which is free from sickness; which, in a greater or less degree, annually visits the City, and acting with commercial causes, arrests the activity of trade. We do not think, under such circumstances, he can decline the pursuit of his creditors in the Courts of New Orleans, and compel them to go to another Parish, where, during two-thirds of the year, his person could not be found.

The fact of the defendant voting here at a municipal election lends strength to the plaintiff's case, but it is not, in our opinion, essential to the decision of this controversy. It is therefore ordered, adjudged, and decreed, that the judgment of the Parish Court be reversed ; that the exception of the defendant be dismissed ; and that the cause be remanded for further "proceedings according to law, the defendant paying the costs of this appeal, and those in-

curred in the Court below, by the filing, trial of, and decree upon this exception.

A true copy.—Clerk's office, May 12th, 1846, N. Orleans.

(Signed) EUGENE LASERE,
*Clerk.*

*Affidavit of Defendant.*—Filed Oct'er 17, 1846.

CHARLES JUDSON
vs.
C. C. LATHROP. } 3d District Court of New Orleans.

C. C. Lathrop, the defendant in the above entitled suit, being duly sworn, deposeth and saith, that the testimony of William Stevy, also Spear, and J. T. Patten, who reside in New York City, is necessary and material to his defence in this case, and that a commission to take the same is necessary.

(Signed) C. C. LATHROP.

Sworn to and subscribed before me, at New Orleans, this 16th day of Oct'er, 1846.

(Signed) GEORGE T. BRIGHT,
*Second Justice of the Peace for the Parish of Orleans.*

*Supplemental answer.*—Filed 16 Jan'ry, 1847.

CHARLES JUDSON
vs.
C. C. LATHROP.

The supplemental answer of defendant prays for a trial by jury.

(Signed) THOS. ALLEN CLARKE,
*For Defendant.*

*Order.*

Let this supplemental answer be filed.
New Orleans, 16th Jan'ry, 1847.

(Signed) T. H. KENNEDY,
*Judge.*

*Consent to issue commission.*—Filed 16th Dec'er, 1846.

CHARLES JUDSON
vs.
C. C. LATHROP.

Third District Court of New Orleans.

It is hereby agreed that a new commission may issue in this case

on behalf of defendant, directed as the former, and that these, under the witness, William Strong, may be examined under the interrogatories and cross interrogatories heretofore propounded to him, and the commissioner is authorized to examine said witness, upon copies of said interrogatories and cross interrogatories and to separate the same from those addressed to other witnesses, and make return of both commissions in accordance.

New Orleans, 16 Dec'er, 1846.

(Signed) M. W. HOFFMAN
*Pl'ff. atty.*

*Affidavit for commission.*—Filed 8th May, 1847.

CHARLES JUDSON
vs.
C. C. LATHROP.

Third District Court of New Orleans.

C. C. Lathrop being duly sworn, deposeth and saith, that the testimony of Elihu Woodruff is material to his defence in this case, and that a commission directed to Turpin to take the same is necessary.

(Signed) C. C. LATHROP,

Sworn to and subscribed before me this 7th May, A. D. 1847.

(Signed) C. B. BEVERLEY,
*Justice.*

*Consent for commission.*—Filed 8th May, 1847.

CHARLES JUDSON
vs.
C. C. LATHROP.

3d District Court.

It is hereby agreed that a commission in this case may issue, directed to any American citizen resident at Tampico, or there stationed, having authority to administer an oath, and that the certificate of the answer executing the commission of his quality shall be conclusive thereof. No right to press the cause to trial at any time, shall be considered as waived by this consent.

(Signed) M. W. HOFFMAN,
THOS. ALLEN CLARKE.

*Affidavit of defendant.*—Filed March 25th, 1847.

CHARLES JUDSON
vs.
C. C. LATHROP.

The defendant being sworn, deposeth and saith, that he expects

and believes that Mr. E. Woodruff will testify that he is acquainted with M. Judson & Co., and the defendant, and has known them since Jan'ry, 1850; that he is acquainted with the matters in dispute between the defendant and M. Judson & Co.; that defendant came to New Orleans in Nov., 1839, at the instance of M. Judson & Co., to engage in business for them and with them; that Judson & Co. did not comply with the terms which had been proposed and promised to remunerate Lathrop for the loss of time and expenses of coming to New Orleans; that the value of said services and the expenses amounted to $1,500 $\frac{53}{100}$; that an arrangement was made by Judson & Co. with the witness, for defendant to go into the witness' employ, at the rate of one hundred dollars a month, as part payment and remuneration of the above-mentioned damages; that he paid defendant $250 therefor; that defendant proposed often through witness to arrange the difference existing with M. Judson & Co. by an arbitration, which M. Judson & Co. refused. That M. Judson & Co. admitted to witness, that they owed to defendant damages and charges for non-compliance with their agreement.

(Signed) C. C. LATHROP.

Sworn to and subscribed before me.
New Orleans, March 25th, 1847.
(Signed) F. MAXENT,
*D'y clerk.*

*Order and continuance.*—March 25th, 1847.

C. JUDSON
vs. } 16671.
C. C. LATHROP.

This cause came on this day for trial, before a jury: M. W. Hoffman, Esq., for plaintiff, T. A. Clarke, for defendant: when upon filing defendant's affidavit, said cause was continued to be fixed by preference.

*Affidavit of M. Judson.*—Filed 26 March, 1847.

C. JUDSON
vs.
C. C. LATHROP.

3d District Court.

Mills Judson, agent of the plaintiff, being duly sworn, says, that Samuel A. Belden is a material witness in this case, and his testimony important to plaintiff. That said Belden is about to absent himself from this State, and is likely to remain some months absent from it.

(Signed) M. JUDSON.
Sworn to and subscribed before me, this 26th March, 1847.
(Signed) W. P. BEDLOCK.
*Clerk.*

*Order and continuance.*—March 20th, 1848.

C. JUDSON
vs.
C. C. LATHROP. } 16671.

This cause came on this day for trial before *me* jury: M. W. Hoffman, Esq., for plaintiff, T. A. Clarke, Esq., for defendant; when defendant's council being unwell, said cause was continued, to be fixed by preference.

*Order and continuance.*

Dec'er 19, 1848.

C. C. LATHROP
vs.
C. JUDSON. } 16671.

This cause came on this day for trial before a jury—Hoffman and Halsey for plaintiff, T. A. Clarke for defendant—when the following persons were called and sworn on said jury, to wit: Henry Peychand, William Massie, G. P. Raymond, L. B. Horn, L. A. Garridel, jr., S. S. Relf, and A. A. Rieffel, when, for want of jurors, said cause is continued till to-morrow at 11 o'clock, a. m., to complete said jury.

*Order and continuance.*

Dec'er 20th, 1848.

CHARLES JUDSON
vs.
C. C. LATHROP. } 16671.

This cause came on this day for trial before a jury, pursuant to adjournment—Hoffman and Halsey, esq., for plaintiff, T. A. Clark, esq., for defendant—when, it being impossible to have a full pannel, said cause was continued, to be fixed by preference.

*Order and continuance.*

May 29th, 1849.

CHARLES JUDSON
vs.
C. C. LATHROP. } 16671.

This cause came on this day for trial before a jury—Hoffman and Halsey, esq., for plaintiff, T. A. Clarke, esq., for defendant. The following persons appeared and were sworn as jurors, viz: Messrs.

H. Lambert, J. E. Blackwell, J. B. Hubbard, Wm. Devoe, S. Weber, E. Creswell, J. N. Riculfi, E. Delery, P. Wagner, F. A. Marron, J. M. Kiefer, and Justin Durel, and the Court appointed H. Lambert, esq., foreman of the jury; when, after hearing testimony until 3 o'clock, p. m., said cause is continued till to-morrow morning at 10 o'clock.

*Bill of Exception.*—Filed by defendant 30th May, 1849.

CHARLES JUDSON
vs.
C. C. LATHROP.

3d District Court of New Orleans.

The defendant in the above entitled cause pleads the peremptory exception, founded in law, of the prescription of two years, as provided by the *eight* section of the act of Congress of the United States, entitled "An act to establish a uniform system of bankruptcy throughout the United States;["] wherefore he prays the dismissal of said plaintiff's demand.

(Signed) THOS. ALLEN CLARKE,
*For Defendant.*

*Bill of Exception.*—Filed 30th May, 1849.

C. JUDSON
vs.
C. C. LATHROP.

3d District Court of New Orleans.

Be it remembered, that on the trial of this cause, plaintiff offered in evidence a letter of defendant, marked O, and suggested the entry to be made that said letter was
to which entry and restriction of said evidence the counsel for defendant objected, on the ground that no restriction can be placed upon the statements and acknowledgments of the defendant, but that the whole letter must be permitted to speak for itself, and that the jury cannot be restrained in their construction of statements and acknowledgments of parties offered in evidence, but must regard them together.

By the Court: But the Court informed the jury that the whole letter was before them for whatever it was worth.

(Signed) T. H. KENNEDY,
*Judge.*

*Judgment.*—May 30th, 1849.

CHARLES JUDSON
vs. 16671.
C. C. LATHROP.

This cause, continued from yesterday, came on again this day for

trial before the jury—Hoffman and Halsey, esq., for plaintiff, T. A. Clarke, esq., for defendant. After hearing evidence, argument of counsel, and the charge of the Court, the jury retired to deliberate; and after some time returned into Court, and, through their foreman, delivered the following verdict, to wit: "The jury find the defendant to pay over to the plaintiff the sum of $1,810 40, without interest, deducting a sum of $1,280 63, for note and services, &c., allowed to the defendant 30th May, 1849.

(Signed) HENRY LAMBERT,
*Foreman.*"

Wherefore, on motion of plaintiff's counsel, it is ordered that the verdict be recorded. And it is further ordered, adjudged, and decreed, that, in accordance therewith, said plaintiff recover of the defendant, Charles C. Lathrop, the sum of five hundred and twenty-nine $\frac{77}{100}$ dollars and costs of suit.

*Rule.*

STATE OF LOUISIANA,
*Third District Court of New Orleans:*

*the 2d day of June*, 1849.

Present, the Honorable T. H. Kennedy, Judge.

CHARLES JUDSON
vs. } 16671.
C. C. LATHROP.

On motion of Hoffman and Halsey, atty's for plaintiff, it is ordered that the defendant show cause, on the 9th inst., at 10 o'clock a. m., why a new trial should not be granted, on the ground that the verdict of the jury, insomuch as it allows the defendant, as an offset, the sum of $1,280 83, and in other respects, is contrary to the law or the evidence.

Extract from the minutes.—Clerk's Office, N. Orleans, June 2d, 1849.

(Signed) CHARLES WEYRHAM,
*D'y Clerk.*

*Sheriff's return.*

Received 2d June, 1849, and served, on the 5th of the same month, copy of the within rule personally on T. A. Clarke, esq., att'y of the defendant. Returned June 5th, 1849.

(Signed) JNO. L. LEWIS,
*Sheriff.*

*Rule.*—June 8th, 1849.

CHARLES JUDSON
vs.
C. C. LATHROP. } 16671.

On motion of T. A. Clarke, of counsel for defendant, it is ordered that plaintiff show cause, on Saturday, 9th June, 1849, why a new trial should not be granted, on the ground, 1st, that the verdict and judgment are contrary to the law and the evidence. 2d, that the jury was *mislaid* by the charge of the Court, as to the various points set forth in the defendant's bill of exception to said charge.

*Rule discharged.*—June 9th, 1849.

CHARLES JUDSON
vs.
C. C. LATHROP. } 16671.

The rule herein taken on the 2d inst. by the plaintiff on the defendant for a new trial, came on this day for trial before the Court: Hoffman and Halsey, Esq., for plaintiff; T. A. Clarke, Esq., for defendant. After hearing argument of council, it was ordered that the rule be discharged, and a new trial refused.

*Rule discharged.*—June 9th, 1849.

CHARLES JUDSON
vs.
C. C. LATHROP. } 16671.

The rule herein taken on 8th inst. by the defendant on the plaintiff came on this day for trial before the Court—Hoffman & Halsey, Esq., for plaintiff; T. A. Clarke, Esq., for defendant. After hearing argument of council, it was ordered that the rule be discharged, and a new trial refused.

*Petition for appeal.*—Filed 10th Nov., 1849.

CHARLES JUDSON
vs.
C. C. LATHROP. }

In the 3d District Court of New Orleans.

The petition of the plaintiff in this case, to the Honorable the Judge of said Court respectfully shows, that he is advised that there is error to his prejudice in the final judgment of this Court, rendered in this case on the 30th day of May, A. D. 1849; and he

prays for a devolutive appeal to the Supreme Court of the State of Louisiana, and he tenders his bond in the sum of one hundred dollars, with Mills Judson, of New Orleans, as security, conditioned as to said appeal according to law.

By his atty's,

(Signed) M. W. HOFFMAN
and J. S. HALSEY.

*Order.*

An appeal to the Supreme Court of the State of Louisiana, returnable the first Monday of December, A. D. 1849, is granted, as prayed for, on the plaintiff's giving bond, according to law, in the sum of one hundred dollars, with Mills Judson, of New Orleans, as security.

New Orleans, Nov'er 10th, 1849.

T. H. KENNEDY,
*Judge.*

Service accepted 10th Nov'er, 1849.

(Signed) THOS. A. CLARKE,
*For Defendant.*

*Bond.*

Know all men by these presents, that we, Charles Judson, principal, and Mills Judson, of New Orleans, security, are held and firmly bound unto C. C. Lathrop, his executors, administrators, and assigns, in the sum of one hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators firmly by these presents. Sealed with our seals, and dated in the City of New Orleans, on this tenth day of November, in the year of our Lord one thousand eight hundred and forty-nine. Whereas the above bounden, Charles Judson, this day filed a petition of appeal from a final judgment rendered in his suit vs. said C. C. Lathrop, in the Third District Court of New Orleans, on the 30th day of May, 1849: now the condition of the obligation is such, that the above bounden, Charles Judson, shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said Mills Judson, surety, shall be liable in his place.

CHARLES JUDSON,
By M. W. HOFFMAN, [SEAL.]
M. JUDSON. [SEAL.]

Signed, sealed, and delivered in presence of
J. S. HALSEY.

*Citation of appeal.*

THE STATE OF LOUISIANA,
*Third District Court of New Orleans:*

To Mr. C. C. Lathrop, New Orleans, greeting:

Whereas Charles Judson has, on the 10th day of Nov'er, filed in the office of the Clerk of the Third District Court of New Orleans a petition of appeal from a certain final judgment rendered in the said Court against him, which appeal is returnable in the Supreme Court of the State aforesaid, on the first Monday of December, A. D. 1849, you are therefore hereby cited to appear, in person or by attorney, in the said Court, on the day last aforesaid, to answer to the said appeal.

Witness the Honorable T. H. Kennedy, Judge of the Court aforesaid, this 10th day of November, in the year of our Lord one thousand eight hundred and forty-nine.

[SEAL.]

(Signed) CHARLES WEYRHAM,
*D'y Clerk.*

*Plaintiff's exceptions.*—Filed 17th Nov'er, 1849.

C. JUDSON
vs.
C. C. LATHROP.

Be it remembered, that on the trial of this case the plaintiff's attorney introduced in evidence a deposition of Belden, stating that he offered it for the purpose of proving that the plaintiff had purchased the claims sued on; and after reading so much of said deposition as related to said fact, to wit: from the commencement of said deposition to the words, "knew the defendant in the fall of 1839," (excepting the clause, that the return of the marshal does not * * * here annexed, marked A, rejected by the Court,) the defendant's att'y insisted that the further deposition of said Belden, immediately following that aforesaid, should be read to the jury, to wit: the deposition beginning at the said words, ["] knew the defendant in the fall of 1839," unto the end; that the plaintiff's attorney objected to the receiving and to the reading of said deposition, on the grounds—1st, that it related to other matters than the fact which the plaintiff's att'y had intended to prove, as aforesaid; 2d, that said deposition was taken by consent, with the reservation of all legal exceptions; 3d, that the matters to which it related were between the defendant and persons distinct from the firm of M. Judson & Co., whose right the plaintiff was exercising; 4th, that the object of defendant's counsel in offering said depositions, was to establish defendant's offsets which was alleged to be against the firm of M. Judson & Co.; that, notwithstanding, the

District Judge received said deposition, and permitted it to be read to the jury; to which opinion the plaintiff's att'y reserved this exception, which was allowed.

Mem. by Mr. Clarke: The ground taken by defendant's attorney is, that if the plaintiff reads the testimony at all, he must read all the testimony taken under the cross-examination; that the direct testimony cannot be read without the cross-examination.

(Signed) T. H. KENNEDY,
*Judge.*

*Plaintiff's exception.*—Filed 17th Nov., 1849.

C. JUDSON
vs.
C. C. LATHROP.

On the trial of this case, the plaintiff's attorney offered in *evidence* the deposition of Belden, for the purpose of proving that said witness acted as agent of plaintiff in purchasing the claims sued on, and to show what said claims consisted of. But the defendant's att'y objected to the reading of so much of said deposition as is contained in the following words: "That the return of the marshal does not specify the particular items, but the purchase set forth in said return, as a list of notes and accounts for $475, included those against the defendant, and comprised all notes and accounts in the schedule here annexed, marked A;" which objection being sustained by the Court, and the said portion of evidence refused, the plaintiff, by his att'y, made this exception to said opinion of the Court, which was allowed.

(Signed) T. H KENNEDY,
*Judge.*

*Defendant's Exceptions.*—Filed Nov. 17, 1849.

CHARLES JUDSON
vs.
CHARLES C. LATHROP.

3d District Court of New Orleans.

Be it remembered, that on the trial of this cause, the defendant offered as evidence to sustain the plea of compensation in this cause certain letters written by M. Judson to said defendant, and dated to the application of said Judson, to be declared a bankrupt: three of which letters the Court permitted to be received as evidence to the jury, with the restriction that they should disregard all the contents of said letters which tended to show any indebtedness by said M. Judson to defendant, and regard only such parts thereof as related to an indebtedness of said firm of M. Judson & Co. to said defendant; to which ruling, restriction, said

testimony, the counsel for the defendant excepted, on the ground that if this action was maintainable at all, it could be alone maintained on the ground of entire ownership of the assets sued for by said Judson; and that all claim against said Judson acquired previous thereto, could be introduced as evidence to prove compensation herein; and the said counsel tendered this his bill of exceptions to be signed, which is accordingly signed.

(Signed) T. H. KENNEDY,
*Judge.*

*Defendant's Exception.*—Filed 17th Nov., 1849.

C. JUDSON
vs.
C. C. LATHROP.

Be it remembered, that on the trial of this case, the defendant offered the depositions of William Strong, marked I, taken under a commission, with the reservation of all exceptions, and of Elihu Woodruff, marked N, taken by consent with the same reservation, and the letters signed by M. Judson, marked K, L, and M, for the purpose of proving the items $30 00, $300 63 and $950 00 of his offstand in compensation, and that the plaintiff's counsel objected to the receiving and to the reading of so much of the deposition of said Wm. Strong as is contained in his answer to the 2d, 3d, 4th, 6th, and 10th direct interrogatories, and the 1st cross-interrogatory, and to the receiving and to the reading of the deposition of said Woodruff from the words, "Mr. Judson stated, that Mr. Lathrop had been in his employment before, and recommended him," to the end of said deposition; and to the receiving and to the reading of the said letters, on the ground that all the matters stated in said answers, deposition, and letters were between the defendant and Mills Judson individually, and other persons not members of the firm of M. Judson & Co., and the plaintiff's claim was alleged to be derived from said firm of M. Judson & Co., and the defendant's demand in compensation was alleged in his answer to be against said M. Judson & Co.; that, notwithstanding, the District Judge received said answers, deposition, and letters, and permitted them to be read to the jury, instructing the jury not to regard anything in them which did not go to establish a claim against M. Judson and Co.; and the plaintiff's counsel made this exception to said ruling of the District Judge, which was allowed; and that unless they found that M. Judson was speaking and acting in behalf of the firm of M. Judson & Co., in the declarations, conversations, agreements, and acts mentioned in said answers, depositions, and letters, they must disregard the said declarations, conversations, agreements, and acts.

(Signed) T. H. KENNEDY,
*Judge.*

*Defendant's Exception.*—Filed 17th Nov., 1849.

CHARLES JUDSON
vs.
C. C. LATHROP.

3d District Court of New Orleans.

Be it remembered, that on the trial of this cause, the plaintiff offered in evidence the testimony of John Gurley, to the introduction of which testimony the counsel for defendant objected, on the ground that, by the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," all sales of property or assets of a bankrupt surrendered by him, must be made pursuant to an order of the District Court of the United States having cognizance of said bankruptcy, and pursuant to formalities in said act prescribed; and that said sale can only be proved by the record of the proceedings in said Court, and cannot be proved by parol; which objections the Court overruled; whereupon, said counsel excepted, tendered this bill of exceptions to be signed, which is accordingly signed.

By the Court: The title is either in plaintiff or in the assignee. The Court considered that the assignee's declarations as a witness in this cause, and his obtaining to intervene, would protect the defendant.

(Signed) T. H. KENNEDY,
*Judge.*

*Defendant's exception.*—Filed 17th Nov., 1849.

CHARLES JUDSON
vs.
C. C. LATHROP.

3d District Court of New Orleans.

Be it remembered, that on the trial of this cause, the counsel for the defendant requested the Court to charge the jury—

1st. That a liquidating partner of a firm had no right to surrender the entire assets of the partnership under the bankrupt law. That the surrender is alone of the interests of the bankrupt in the partnership.

2d. That, if they are of opinion that the plaintiff has acquired the interests of Mr. Judson alone, they must find for defendants.

3d. That the 8th section of the bankrupt law operates as a bar or prescription of any suit of a bankrupt assignee, or of any person claiming under him, unless the same shall be brought within two years after the declaration and decree of the bankruptcy, or after the cause of suit shall first have accrued.

4th. That, if they are of opinion that the defendant made proof

in the Bankrupt Court of the claims now offered in compensation, that said proof is conclusive against the assignee, and any person claiming under him, until set aside by the Court decreeing the bankruptcy.

5th. That, an assignee under the bankrupt law cannot stand in judgment in any suit instituted by him, unless the same was instituted within two years after the declaration and decree of bankruptcy, or after the cause of suit shall first have accrued; and that an assignee of the bankrupt's assignee can have no greater rights than his assignor.

Upon which application of defendant's counsel, the Court charged the jury that, upon the 1st and 2d points, the general rule of law was as stated; but that defendant was stopped from claiming the benefit of it, by proving his claims in the Bankrupt Court against Judson & Co. The third and fifth points, the Court refused to charge the jury, but stated the reverse to be the law; upon the 4th point, the Court charged the jury that, inasmuch as there was no special plea made by the defendant relying upon his proof in bankruptcy. as an estoppel, and the said proof was introduced as simple evidence in the cause, they must weigh said proof in connection with the other evidence in the cause, and decide upon the facts as they appeared to them from the whole evidence, including the proof; to which said ruling of the Court, in refusing to charge the said jury as requested, and in charging them, as it did, under the 1st, 2d, and 4th points, the counsel for defendant excepted, and tendered this bill of exceptions to be signed, which is accordingly signed.

By the Court: The Court did not deny, under 5th point, that an assignee of a bankrupt's assignee can have no greater rights than his assignor.

(Signed) T. H. KENNEDY,
*Judge.*

*Mandate.*—Filed 19th Feb'ry, 1853.

Supreme Court of the State of Louisiana.

The Court met Wednesday, June 14th, 1851. Present, their Honors George Eustis, Chief Justice; P. A. Rost, Thos. Sidell, and Isaac T. Preston, Associate Justices.

CHARLES JUDSON, App't,
vs.
C. C. LATHROP, App'le. } No. 1545.

Appeal from the 3d District Court of New Orleans. It is ordered, adjudged, and decreed, that the judgment of the Court below be reversed, and that the plaintiff recover from the defendant the sum of eighteen hundred and ten $\frac{50}{100}$ dollars, with interest thereon,

at the rate of five per cent. per annum from the date of judicial demand, until paid, and costs in both Courts. [SEAL.]

A true extract from the minutes.

F. McCULLOCK,
*Dy. clerk.*

Clerk's office New Orleans, Feb'ry 18th, 1853.

*Fi. Fa.*

STATE OF LOUISIANA,
*Third District Court of New Orleans.*

The State of Louisiana, to the Sheriff of the Parish of Orleans, greeting:

We command you, in the name of the State of Louisiana, and of the Third District Court of New Orleans, that you demand from the defendant, C. C. Lathrop, the sum of eighteen hundred and ten $\frac{50}{100}$ dollars, with interest at 5 [per cent.] per annum from judicial demand, to wit, from the 2d May, 1845, until paid, and also the costs which plaintiff, Charles Judson, lately recovered by judgment of the Supreme Court; and if he shall not pay the same, after legal demand, that then you cause the same to be made out of the personal estate of the said defendant, except slaves, in your district, if sufficient personal estate, exclusive of slaves, can be found therein; but if sufficient personal estate of said defendant, exclusive of slaves, cannot be found in your district, that then you cause the said sum to be made of the real estate and slaves of said defendant in your district, in whose hands soever the same may have come; and that you have those moneys before our said Court, to render the said plaintiff, Charles Judson, for the judgment aforesaid, on or before the 4th Monday of August next, together with this writ.

Witness, the Honorable Thomas H. Kennedy, Judge of the said Court, the 5th day of July, in the year of our Lord 1853, in the 78th year of the independance of the United States.

(Signed) LOUIS R. COURTAIN,
*Dy. Clerk.*

*Sheriff's return on back of Fi. Fa.*

Received July 5th, 1853, at 10½ o'clock, A. M. Returned by an order of plaintiff's atty.

Returned 26 Nov., 1853.

(Signed) A. R. LEGETT,
*Dy. Sheriff.*

*Supplemental petition.*—Filed 6th July, '53.

CHARLES JUDSON
vs.
C. C. LATHROP.

To the Honorable the Judge of the 3d District Court of New Orleans:

The supplemental petition of Charles Judson, who resides in New York, respectfully shews, that in the above entitled suit, being No. 16671 of the late Parish Court, he obtained judgment, by decree rendered by the honorable the Supreme Court of Louisiana, on or about the 18th Feb'ry, 1853, for the full sum of eighteen hundred and ten $\frac{50}{100}$ dollars, with 5 per cent. interest thereon from 2d May, 1845, with costs of suit. Your petitioner further avers, that he has caused execution to issue in the above case, and that he believes John W. Whaling and Madame Francis Walsh, his wife, are indebted to and have property of said defendant, and that your petitioner has annexed interrogatories to said Whaling and wife. Wherefore, petitioner prays to be allowed to file this supplemental petition, that said John W. Whaling and Madame Frances Walsh, his wife, all of whom reside in this city, be cited, and ordered to answer categorically, under oath, the hereunto annexed interrogatories, within the legal delay; and in defaultt hereof, that the same be taken for confessed; and he prays for all other and further relief.

(Signed) H. D. OGDEN,
*Att'y.*

Interrogatories propounded to John W. Whaling and Mrs. Frances Walsh, his wife.

Int'ory 1. Do you not, or did you not at the date of service of these interrogatories, owe, or did you not then have in your possession, any rights, titles, property, or money, belonging the defendant? If aye, what, and how much? Is or was not the same sufficient to pay the plaintiff's claim, as set forth in the foregoing petition?

(Signed) H. D. OGDEN,
*Att'y.*

*Order.*

Let this supplemental petition be filed, and let the garnishees herein named answer, under oath, and in writing, within the legal delay, the interrogatories to them propounded.

New Orleans, 6th July, 1853.

(Signed) M. M. REYNOLDS,
*Judge,*
*Acting during the absence of Judge Kennedy.*

*Citation.*

STATE OF LOUISIANA,
*3d District Court of New Orleans.*

State of Louisiana, to John W. Whaling, (garnishee,) New Orleans:

You are hereby cited to declare, under oath, what property belonging to the defendant in this case you have in your possession, or in what sum you are indebted to said defendant; and also to answer in writing, under oath, the interrogatories annexed to the petition, of which a copy accompanies this citation, within ten days after the service thereof, or otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness, the Honorable T. H. Kennedy, Judge of the said Court, this 6th day of July, in the year of Lord 1853.

(Signed) F. GOUDON,
*D'y Clerk.*

CHARLES JUDSON
vs. } 16671.
C. C. LATHROP.

*Sheriff's return on back of citation.*

Rec'd July 6th, 1853, and on 7th of same month served copies of supplemental petition, interrogatories, order, and citation on Jno. W. Whaling, (garnishee,) through I. S. Whitaker, esq., curator ad hoc, in person.

Returned July 7th, 1853.

(Signed) E. SAMPSON,
*D'y Sh'ff.*

*Citation.*

STATE OF LOUISIANA,
*3d District Court of New Orleans:*

State of Louisiana, to Mrs. Frances Walsh, (garnishee,) New Orleans, (wife of John W. Whaling.)

You are hereby cited to declare, on oath, what property belonging to the defendant in this case you have in your possession, or in what sum you are indebted to said defendant; and also to answer, in writing, under oath, the interrogatories annexed to the petition, of which a copy accompanies this citation, within ten days after the service thereof; otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interests and costs.

Witness the Honorable T. H. Kennedy, Judge of the said Court, this 6th day of July, in the year of our Lord 1853.

(Signed) F. GOUDON,
*D'y Clerk.*

CHAS. JUDSON
vs.
C. C. LATHROP. } No. 16671.

*Sheriff's return on back of citation.*

Rec'd July 6th, 1853, and on 7th of same month served copies of supplemental petition, interrogatories, order, and citation on Mrs. Frances Walsh, (garnishee,) wife of John W. Whaling, through I. S. Whitaker, curator ad hoc, in person.

Returned July 7th, 1853.

(Signed) C. SAMPSON,
*D'y Clerk.*

STATE OF LOUISIANA,
*Third District Court of New Orleans:*

I, William Joseph Castell, clerk of the Third District Court of New Orleans, do hereby certify that the above and foregoing forty-five pages do contain a full and complete transcript of the record of the case wherein Charles Judson is plaintiff and C. C. Lathrop is defendant, instituted in the late Parish Court, and now on the records thereof, under the No. 16671 of the docket of the late said Court, (with the exception of the testimony taken on the trial of the above said case; and I do further certify that, pursuant to an act of the legislature of this State, approved the 30th April, 1846, the records of the said late Parish Court for the Parish and city of New Orleans have been transferred to this Court, and are in my custody as clerk thereof.

In testimony thereof, I have hereunto set my hand and affixed the seal of the said Court, at the city of New Orleans, on this 29 day of April, in the year of our Lord 1854, and the 78th year of the independence of the United States of America.

W. J. CASTELL,
*Clerk.*

I, Thomas H. Kennedy, sole Judge of the Third District Court of New Orleans, do hereby certify that William J. Castell was, and is at the time of signing the foregoing certificate, clerk of the said Court, and that the signature W. J. Castell is in the proper hand-writing of him, the said clerk; to his official acts as such full faith and credit are due and owing; and I do further certify, that his attestation is in due form of law.

Given under my hand at the City of New Orleans, on this 29th day of April, in the year of our Lord 1854.

T. H. KENNEDY.

I, William J. Castell, Clerk of the Third District Court of New Orleans, do hereby certify, that the Honorable Thomas H. Kennedy, whose name is signed to the foregoing certificate, is the sole Judge of this Court, and I do further certify that said Court is a Court of record.

In testimony whereof, I hereunto sign my name this 29th day of April, 1854.

WILLIAM J. CASTELL,
*Clerk.*

*Exception & plea.*—Filed 18th May, 1854.

To the Honorable the Judges of the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana:

The exception and plea to the jurisdiction of Charles C. Lathrop, of New Orleans, to the petition filed against him in this Honorable Court, by Charles Judson, of the State of New York.

This respondent alleges, that this Honorable Court has no jurisdiction of the suit instituted in this matter, the same having been litigated and deceden in the Courts of the State of Louisiana, and an execution having been issued on the judgment in said suit by the said Charles Judson against this respondent, under which execution a seizure has been made of certain property as belonging to this respondent, and which execution has not yet been returned; all of which will fully appear by reference to the suit No. 16671, of the docket of the late Parish Court of New Orleans, transferred to the Third District Court of New Orleans, and to the notice of seizure, herewith filed. Wherefore, this respondent prays that his exception may be sustained, and that he may be excused from answering to said petition, and that he may be hence dismissed with his costs.

J. VAN MATRE,
& R. HUNT,
*For def't.*

*Notice of seizure, referred to in foregoing plea.*

NEW ORLEANS, *July 6th*, 1853.

CHARLES JUDSON
vs.
C. C. LATHROP. } 16671.

In the Third District Court of New Orleans.

Sheriff's Office, Parish of Orleans.

To C. C. Lathrop:

Take notice, that I have seized, and in three days from the service hereof, shall proceed to advertise and sell, according to law,

all your right, title, interest, &c., in and to the suit of C. C. Lathrop, vs. J. W. Whaling & Wife, being the No. 6564 of the docket of the 4th District Court of New Orleans; also, all your right, title, interest, &c., in and to the order of seizure and sale of the slave Letty, issued in said suit No. 6564, to pay and satisfy the suit issued in this case, say the sum of $1810\frac{50}{100}$ with interest and costs, unless the same is immediately paid.

MICHEL DE ARMAS,
*Dy. Sheriff.*

*Minutes.*—April Term, 1854.

*May 27th*, 1854.

Present, Hon. Theo. H. McCaleb, District Judge.

CHARLES JUDSON
vs. } 2332.
C. C. LATHROP.

The exception herein filed by the defendant came on for trial; and after argument of counsel, was submitted to the Court, and taken under advisement.

*Minutes.*—April Term, 1854.

*June 1st, A. D.* 1854.

Present, Hon. T. H. McCaleb, District Judge.

CHARLES JUDSON
vs. } 2332.
C. C. LATHROP.

The exception in this cause having been argued and submitted, and the Court having considered the same, this day ordered and adjudged that the said exception be dismissed at defendant's costs.

*Answer.*—Filed 1st June, 1854.

Charles C. Lathrop, of New Orleans, defendant herein, now comes unto this Honorable Court, by J. Van Matre and R. Hunt, his attorneys, and saving and reserv'ng to himself all benefit and advantage of the exceptions hereinbefore filed by him, and which has been overruled by this Honorable Court, for answer to the demand of said plaintiff, respectfully represents: That said defendant, on the 11th of February, 1851, made a cession, under the insolvent laws of this State, of all his property to his creditors, in the Honorable the Third District Court of New Orleans. That said cession was accepted by the Judge of the said Court, for the benefit of said creditors, who also ordered a meeting of said creditors before a notary public; a stay of all proceedings, as well against the person

as the property of said defendant; and appointed an attorney to represent the absent creditors. That at a meeting of said creditors a syndic was appointed, who has sold all the property surrendered, and filed a tableau of distribution of the proceeds thereof, which has been approved and homologated by the judgment of said Court. That said plaintiff was placed on the schedule filed by the said defendant in his said cession as a creditor for the amount of the judgment sued on in this suit, and was regularly made a party to said cession, and notified thereof by means of the notice for him which was served on the attorney appointed to represent the absent creditors, and was also placed by said syndic on said tableau of distribution for the pro rata dividend coming to him on the amount of said judgment, all of which will fully appear from the record and proceedings in the suit of said defendant against his creditors above referred to, copies of which will be produced on the trial hereof. Defendant now avers that the debts upon which the judgment of said plaintiff was rendered, were contracted in this State, between one M. Judson, acting as liquidating partner of the firm of M. Judson & Co., late of New York, and said defendant, both at that time and still residents of this State; and that said plaintiff became possessed of the right of the said M. Judson & Co. to said debts, by purchase, at the sale thereof made by the United States marshal, in the matter of the said M. Judson against his creditors, in the District Court of the United States in and for the Eastern District of Louisiana, in bankruptcy, whereby and by means of all which said plaintiff is bound by said cession, and is estopped thereby from any further proceedings against said defendant on the judgment sued on.

Wherefore said defendant prays that the demand of said plaintiff be rejected and dismissed, and that he be condemned to pay the cost thereof, and also for all further and general relief.

J. VAN MATRE,
*For Def'dt*

*Record referred to in foregoing answer.*—Filed on trial, 16 Nov., 1854.

Third District Court of New Orleans, La.

CHARLES C. LATHROP
vs.
His creditors, & the creditors of the late firm of C. C. Lathrop & Co., Lathrop, Knox & Co., and Lathrop & Co. } No. 3485.

*Petition.*—Filed 11th Feb'y, 1851.

To the Hon. the Judge of the Third District Court of New Orleans:

The petition of Charles C. Lathrop, of New Orleans, individually,

and as a member of the late firm of C. C. Lathrop & Co., Lathrop, Knox & Co., and Lathrop & Co., respectfully represents: That on account of losses in business, and the great difficulty and delay attending the collection of the debts due him in the several capacities aforesaid, petitioner finds himself unable to pay his debts. That several of his creditors have obtained judgments against him, and are about issuing execution thereon. That in order to secure an equal distribution of his assets among his several creditors, petitioner is compelled to make a surrender of all his property to them, and to that end annexes hereto a schedule of his affairs, containing the names of his creditors, in the several capacities aforesaid, together with their residences and amounts due them, and also a description of all his assets, and all the assets of the several firms aforesaid, together with a statement of losses in business, &c.

Wherefore, petitioner prays that he may be permitted to make a cession of said property to his creditors, and the creditors of the several firms aforesaid, and that the same be accepted by this Honorable Court for their benefit; that a meeting of said creditors be ordered before Notary Public, in the City of New Orleans, on the day of 1851, to deliberate on his affairs; and that, in the meantime, all proceedings be stayed against his person and property, and also that an attorney be appointed to represent the absent creditors.

Petitioner also prays for all general relief, &c.

(Signed) J. VAN MATRE,
THOS. ALLEN CLARK,
*Att'ys for pet'nr.*

*Order.*

The cession of property by the insolvent is accepted by the Court for the benefit of the creditors, and it is ordered that a meeting of said creditors be convened and held at the office of C. Ainsworth, esq., Notary Public, on Monday, the 17th of March, 1851, at 10 o'clock, a. m., to deliberate upon the affairs of the insolvent, and in the meantime, all proceedings against his person and property be stayed; and Finney, Esq., be appointed to represent the absent creditors.

New Orleans, 11 February, 1851.

(Signed) T. H. KENNEDY, *Judge*.

*Extract from Clerk's advertisement book.*

STATE OF LOUISIANA,
*3d District Court of New Orleans.*

CHARLES C. LATHROP
vs.
His creditors, and the creditors of the late firm of C. C. Lathrop & Co., Lathrop, Knox, & Co., and Lathrop & Co. } No. 3485.

The cession of property by the insolvent is accepted by the

Court for the benefit of the creditors, and its ordered, that a meeting of said creditors be convened and held at the office of A. C. Ainsworth, esq., Notary Pub., on Monday, the 17th day of March, 1851, at 10 o'clock a. m., to deliberate upon the affairs of the insolvent, and that, in the meantime, all proceedings against his person and property be stayed, and John Finney, esq., be appointed to represent the absent creditors. By order of the Court.

Clerk's office, N. O., February 11th, 1851.

F. GOUDON,
*D'y Clerk.*

It appears from the said advertisement book, that the notices of the meeting of the creditors in the above matter were published three times in French and English, in the New Orleans Bee, a newspaper published in French and English in this City, viz: on the 12th and 28th of February, and on the 15th of March, 1851.

*Declination of John Finney, and motion to appoint an att'y for the absent creditors in this case.*—Filed 24th February, 1851.

C. C. LATHROP
vs.
HIS CREDITORS.

3d District Court of New Orleans.

I would respectfully decline serving as attorney for absent creditors, inasmuch as Prentiss & Finney are creditors of the insolvent, and I would then have an interest upon the record in conflict with that of all other creditors. I therefore pray to be excused.

Feb'y 24th, 1851.

(Signed) JNO. FINNEY.

*Extract from the minutes.*

C. C. LATHROP
vs.
HIS CREDITORS.

In the Hon. 3d District Court of New Orleans.

On motion of Van Mater and Clarke, att'ys for the insolvent, and on producing to the Court the declination of John Finney, esq., appointed to represent the absent creditors in the above case, it is ordered, that P. L. Bayne, esq., be appointed to represent the absent creditors in said case.

*List of absent creditors.*

3d District Court of New Orleans.

CHARLES C. LATHROP.
vs.
His creditors, & the creditors of the late firm of C. C. Lathrop & Co., Lathrop, Knox & Co., and Lathrop & Co. } No. 3485.

List of absent creditors.

1. R. F. Knox & Co.....St. Louis.
2. Charles Parbridge.....New York.
3. Randall & Bro.....Boston.
4. Benj. Blossome.....New York.
5. B. A. Fahnestock.....Pittsburgh, Pa.
6. Thompson & Graham.....Covington, Ind'a.
7. Estate of J. B. Adams.....Lowell, Mass.
8. J. S. Osborne.....Pt. Commerce, Ind'a.
9. Spaffard, Hoyt, & Co.....New York.
10. Wm. McCully & Co.....Pittsburgh.
11. Cook & Hanley.....New Orleans & Memphis.
12. Wick & McChandliss.....Pittsburgh, Pa.
13. Brown & Mathews, (Attornies.).....New York.
14. Michael Ernty.....Indiana.
15. E. R. Dodge.
16. Chas. Judson.....New York.
17. Wilmot Williams.....Do.
18. William Williams.....Do.

I hereby [certify] the above to be a true list of the absent creditors in the above entitled case.

Third District Court of New Orleans.—Clerk's Office, New Orleans, February 24th, 1851.

(Signed) LEWIS R. COURTIN, [SEAL.]
*Dy. Clerk.*

*Sheriff's return on back of list of absent creditors above.*

Received 25th February, 1851, and on the 26th of same month, served copies of notices to absent creditors, personally, on T. L. Bayne, esq., appointed to represent them. Returned 27th February, 1851.

(Signed) N. TREPAGNIER,
*Dy. Sheff.*

*List of creditors residing in New Orleans.*

CHARLES C. LATHROP
vs.
His creditors & the creditors of the late firm of C. C. Lathrop & Co., Lathrop, Knox & Co., and Lathrop & Co. } No. 3485.

List of creditors residing in New Orleans.

1. Wm. M. Perkins, agent of Tennessee Ins'ce Co.
2. Geo. Foster & Co.
3. Cook & Hanley.
4. The creditors of Green, Carman & Green.
5. Prentiss & Finney.
6. The State.
7. Cook, Young & Co.
8. Waters & Co.
10. Daniel Morgan.
11. J. Van Matre.
12. Thos. Allen Clarke.
13. Chs. Judson.
14. Michael Ernty.

I hereby certify the above to be a true list of the creditors in the above case, residing in New Orleans.

Third District Court of New Orleans, Clerk's Office, New Orleans February 24th, 1851.

(Signed) LOUIS R. COURTIN, [SEAL.]
*D'y Clerk.*

*Proces verbal of meeting of creditors.*—Filed 20th March, 1851.

Meeting of the creditors of C. C. Lathrop & Co., Lathrop, Knox & Co., and Lathrop & Co., of this City.

By virtue of, and in pursuance to, an order from the Hon. the Third District Court of New Orleans, State of Louisiana, bearing date the eleventh of February, eighteen hundred and fifty-one, rendered on the petition of Charles C. Lathrop, a resident of this City, praying that he be permitted to make a cession of his property, and the property of the late firms of C. C. Lathrop & Co., Lathrop, Knox & Co., and Lathrop & Co., of which firm he was a member, be accepted for the benefit of his creditors and the creditors of said firms: that a meeting of the aforesaid creditors be convened, according to law, at which time and place as said Court might direct, to take into consideration the affairs of said firms, and of said C. C. Lathrop individually, and to grant them a discharge of all debts heretofore contracted by said C. C. Lathrop, and said

firm, and that in the mean time, all proceedings against the person and property of said Charles C. Lathrop, C. C. Lathrop & Co., Lathrop, Knox & Co., and Lathrop & Co. be stayed, and that, after due proceedings, the person and future property of the said Charles C. Lathrop be discharged of all liabilities heretofore contracted by him individually, or as a member of either of the aforesaid firms. Duly certified copies of which petition and order of Court, together with a schedule of the affairs of said insolvents, is hereunto in the margin for reference annexed.

Be it known, that on the seventeenth day of March, in the year of our Lord one thousand eight hundred and fifty-one, before me, Albert Childe Ainsworth, a notary public in and for the Parish and City of New Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared the said Charles C. Lathrop, at the hour of ten o'clock a. m., who exhibited the accounts for and against his said estate, and declared that, for the reasons in his said petition, stated and set forth, he finds himself totally unable to meet the engagements mentioned in the aforesaid schedules, and to pay the full amount of his debts; wherefore, he hereby solicits his creditors duly to consider the state of his affairs individually, and as a member of said firms, to accept the surrender of property made as aforesaid, and to grant him a full and entire discharge from all liability for his said debts individually, and as a member of the aforesaid firms, and to appoint a syndic to take charge of the property surrendered, and to manage the settlements of said insolvent estate, according to the laws of this State in such made and provided, and generally to be and perform all other things necessary and requisite to be done in and about the premises by virtue of the said order of Court. In faith whereof, the said appearer subscribed his name.

(Signed) C. C. LATHROP.

Whereupon, personally came William M. Perkins, agent of the Tennessee Insurance Company, who being by me, notary public, duly sworn according to law, declared that the firm of Lathrop, Knox & Co., of which the said C. C. Lathrop is a member, is justly and truly indebted unto him, as agent of said Insurance Company, in the sum of five hundred dollars by a promissory note, that he accept the surrender of property made as aforesaid by said insolvents, grant the said C. C. Lathrop the discharge prayed for, and votes for O. E. Willcox to be sole syndic of the creditors of said insolvents. In faith whereof, the said appearer hereunto subscribes his name.

(Signed) W. M. PERKINS.

Whereupon, personally came Obel P. Miller, of this city, herein acting as the agent and attorney in fact of Benjamin Adams, administrator of the estate of John R. Adams, late of Lowel, State

of Massachusetts, by virtue of a power of attorney hereunto annexed, who being by me, notary, duly sworn according to law, declared that the firm of Lathrop, Knox & Co., of which the said C. C. Lathrop is a member, is justly and truly indebted unto the estate of John R. Adams in the sum of ninety-two dollars and twenty-six cents in and by an open account, that he accepts the surrender of property made as aforesaid by said insolvents, grants unto the said insolvents the discharge prayed for, and votes for O. E. Willcox to be sole syndic of the creditors of said insolvents. In faith whereof, the said appearer hereunto subscribes his name.

(Signed) O. P. MILLER.

Whereupon, personally came J. Van Matre, of this city, who being by me, notary, duly sworn according to law, declared that the firm of Lathrop & Co., of which the said C. C. Lathrop is a member, is justly and truly indebted unto him in the sum of forty-five dollars in and by an open account, that he accepts to the surrender of property made as aforesaid by said insolvent, and grants the said insolvent the discharge prayed for, and votes for O. E. Wilcox to be sole syndic of the creditors of said insolvents, hereby dispensing with the bond to be furnished by the syndic. (Signed) In faith whereof, the said appearer hereunto subscribes his name.

(Signed) J. VAN MATRE.

Whereupon, personally came Edward Foster, of the firm of George Foster & Co., of this city, and herein representing the said firm, who being by me notary duly sworn according to law, declared that the firm of Lathrop, Knox & Co., of which C. C. Lathrop is a member, is justly and truly indebted unto his said firm in the sum of three hundred and sixteen dollars and thirty-six cents by a promissory note, that he accepts the surrender of property made as aforesaid by said insolvents, grants unto the said insolvents the discharge prayed for, and votes for O. E. Willcox to be sole syndic of the creditors of said insolvents. In faith whereof, the said appearer hereunto subscribes the name of his said firm.

(Signed) EDWARD FOSTER.

Whereupon, personally came F. Serda, of this city, herein acting as the agent of William McCully & Co., of Pittsburgh, Pennsylvania, who being by me, notary, duly sworn according to law, declared that the firm of Lathrop, Knox & Co., of which the said C. C. Lathrop is a member, is justly and truly indebted unto the said William McCully & Co. in the sum of two hundred and three dollars and seven cents in and by an open account, that he accepts the surrender of property made as aforesaid by said insolvents, grants unto the said insolvents the discharge prayed for, and votes for O. E. Wilcox to be sole syndic of the creditors of said insol-

vents. In faith whereof, the said appearer hereunto subscribes the name of said firm.

(Signed) WILLIAM McCULLY & CO.,
By F. SERDA.

Wherupon, personally came Thomas Allen Clarke, of this city, who being by me, notary, duly sworn according to law, declared that Charles C. Lathrop is justly and truly indebted unto him in the sum of one hundred dollars for legal services, that he accepts the surrender of property made as aforesaid by said insolvents, grants unto the said insolvents the discharge prayed for, and votes for O. E. Wilcox to be sole syndic of the creditors of the aforesaid insolvents, and hereby dispenses with the bond to be furnished by the syndic. In faith whereof, the said appear hereunto subscribes his name.

(Signed) THO'S ALLEN CLARKE.

Whereupon, personally came Ja's H. Mulford, of the firm of Edgell, Mulford & Co., of this city, the agents of Randall & Bro., of Boston, by virtue of the letter of authority, hereunto annexed, who being by me, notary, duly sworn according to law, declared that the firm of Lathrop, Knox & Co., of which the said C. C. Lathrop is a member, is justly and truly indebted unto Randall & Bro. in the sum of six hundred and thirty-two dollars and twenty-six cents by a promissory note, that he accepts the surrender of property made as aforesaid by said insolvents, grants unto said insolvents, the discharge prayed for, and votes for O. E. Wilcox to be sole syndic of the creditors of said insolvents. In faith whereof, the said appearer hereunto subscribed his name.

(Signed) RANDALL BRO.,
By EDGELL, MULFORD, & CO.

Whereupon, personally came O. E. Wilcox, of this city, herein acting as the agent of R. F. Knox & Co., of Saint Louis, Missouri, by virtue of a letter of authority hereto annexed, who being by me, notary, duly sworn according to law, declared that the firm of Lathrop, Knox & Co., of which the said C. Lathrop is a member, is justly and truly indebted unto R. F. Knox & Co., in the sum of eleven hundred and twenty-eight dollars and sixty-nine cents in and by an open account, that he accepts of the surrender of property made as aforesaid by said insolvents, grants unto the said insolvents the discharged prayed for, and, at the request of said R. F. Knox & Co., votes for himself to be sole syndic of the creditors of said insolvents, and hereby dispenses with the bond to be furnished by the syndic. In faith whereof, the said appearer subscribes his name.

(Signed) R. F. KNOX & CO.,
By Att'y O. E. WILCOX.

Whereupon, personally came W. A. Violett, of this city, herein

acting as the agent of B. A. Fahnstock & Co., of Pittsburgh, Pa., by virtue of the letter of attorney hereto annexed, by me, notary, duly sworn according to law, declared that the firm of Lathrop, Knox & Co., of which the said C. C. Lathrop is a member, is justly and truly indebted unto the said B. A. Fahnstock & Co. in the sum of four hundred and thirteen dollars and eighty-nine cents by a promissory note, and one hundred and forty-four dollars and eleven cents in and by an open account, that he accepts the surrender of property made as aforesaid by said insolvents, grants them the discharge prayed for, and votes for C. C. Lathrop to be sole syndic of the creditors of said insolvent, and hereby dispenses with the bond to be furnished by the syndic. In faith whereof, the said appearer hereunto subscribes his name.

(Signed) WICK & McCANDLISS,
By W. A. VIOLETT.

And now to these presents, personally came and intervened T. L. Bayne, attorney and counseller at law, duly appointed by the Court to represent the absent creditors in this case, who, after having carefully read and fully taken cognizance of the foregoing proceedings, declared that he has no objection thereto. In faith whereof, he hereunto subscribes his name.

(Signed) THO'S L. BAYNE.

And now, at the hour of six o'clock p. m. on said day, no other creditor or representatives of creditors having appeared to make further declarations on the premises, I, the said notary, do close the proceedings, the same having been opened at ten o'clock a. m. as aforesaid, and kept open throughout the day. Thus done, held, and closed at my office, in the City of New Orleans, in the presence of William Shannon and Walter S. Jones, competent witnesses, who hereunto sign their names on this seventeenth day of March, in the year one thousand eight hundred and fifty-one, together with me, the notary aforesaid.

Original: (Signed) WILLIAM SHANNON,
WALTER S. JONES.
A. C. AINSWORTH, *Not. Pub.*

I hereby certify the foregoing to be a true copy of the original meeting of the creditors extant in my current register. In faith whereof, I grant my signature and seal of office, at New Orleans, this eighteenth day of March, in the year of our Lord one thousand eight hundred and fifty-one.

(Signed) A. C. AINSWORTH, [SEAL.]
*Not. Pub.*

*Petition to homologate tableau.*—Filed April 13th, 1852.

To the Hon. the Judge of the 3d District Court of New Orleans:

The petition of Owen E. Wilcox, of New Orleans, syndic of the creditors of the insolvent estate of Charles C. Lathrop, against his creditors, the creditors of Lathrop, Knox & Co., C. C. Lathrop & Co., and Lathrop & Co., respectfully represents: That petitioner has fully administered said estate, and hereto annexed a tableau of distribution of the funds thereof, which he prays may be published, according to law, and, after all due proceedings had, that the same be homologated, and that he be authorized to pay and distribute said funds in accordance therewith, and also further prays for general relief, &c.

(Signed) J. VAN MAITRE,
and THOS. ALLEN CLARKE,
*For Petitioner.*

*Order.*

Let all persons concerned show cause, within ten days from the first publication of this order, why the tableau of distribution, filed herein by the syndic, should not be homologatad and approved, and the funds distributed in accordance therewith.

New Orleans, April 13th, 1852.

(Signed) T. H. KENNEDY,
*Judge.*

*Syndic's tableau.*—Filed April 13th, 1852.

Tableau of the distribution of funds received in the case of C. C. Lathrop vs. his creditors, the creditors of Lathrop, Knox & Co., C. C. Lathrop & Co., and Lathrop & Co.

Privileged claims paid.

| | |
|---|---|
| Sheriff's and Clerk's fees, p'r voucher | $131 61 |
| Mrs. Ainsworth, for notarial services of her husband, A. C. Ainsworth, dec | 50 00 |
| Wm. Shannon, for notarial fees | 10 00 |
| Interest und protest on Mr. Lathrop's notes given for lots in Lafayette, per order of Sheriff | 22 63 |
| Bill of taxes on lots in Lafayette | 5 00 |
| " N. O. Bee, for advertising | 5 00 |
| " appraisers' | 8 00 |
| " J. Van Matre & T. Allen Clark, att'y for this insolvent | 150 00 |
| " J. Van Matre & T. Allen Clarke, for services rendered syndic | 150 00 |

| | |
|---|---|
| For syndic com's on $2,067 50 | $103 35 |
| Homologating this tableau | 25 00 |
| | 660 59 |
| Am't on hand for distribution | 1,406 41 |
| | $2,067 00 |

Received of J. P. Frevet, Sheriff, am't sale under surrender of insolvent ..... $2,067 00

Names of creditors of the insolvent who have proved their claims.

| | | |
|---|---|---|
| R. F. Knox & Co | St. Louis | $1,128 69 |
| Chs. Pastridge | New York | 51 06 |
| Wm. M. Perkins, ag't Ten's. Ins. Co. | New Orleans | 500 00 |
| Geo. Foster & Co | do. | 316 36 |
| Randall & Bro | Boston | 642 46 |
| Benj. Blossom | New York | 981 34 |
| B. A. Fahenstock | Pittsburgh | 558 00 |
| Thompson & Graham | Coving'n, Ind'a | 1,870 61 |
| Est. of J. R. Adams | Lowell, Mass | 92 26 |
| J. S. Osborne | Indiana | 338 92 |
| Spafford, Hoyt & Co | New York | 800 00 |
| Wm. McCauly & Co | Pittsburgh | 203 07 |
| Wick & McChandliss | Pittsburgh | 873 00 |
| David Nichols, for ac. Brown & Matthews, | New York | 346 32 |
| G. M. Nichols | Shreveport, La | 152 41 |
| Prentiss & Finney | New Orleans | 250 00 |
| T. Allen Clarke | do | 100 00 |
| Lathrop, Knox & Co | do | 245 54 |
| Waters & Co | do | 181 19 |
| J. Van Matre | do | 45 00 |
| | | $8,887 98 |

Pro rata division to these creditors, $15\frac{2}{3}\frac{6}{2}$ per cent.

Names of the creditors of the insolvent appearing upon his schedule, but who have not rendered any proof of their claims.

| | | |
|---|---|---|
| Cook & Hawley | Memphis, Tenn | $15 04 |
| Creditors of Green, Carman & Green | Clinton, La | 207 74 |
| State of Louisiana, for taxes due | New Orleans | 31 87 |
| Cook, Young & Co | do | 20 70 |
| Sheriff, Parish of Orleans | do | 2 50 |
| Chs. C. Judson, judg't in Supreme Court, La | New York | 1,810 49 |
| W. D. Winter | Clinton, La | 50 00 |
| Y. S. Lyons | do | 50 00 |
| E. T. Merrick | do | 25 00 |

| | | |
|---|---|---|
| Dan. Morgan | New Orleans | $92 00 |
| Wilmot Williams | New York | 178 11 |
| Cl'k of District Court | Clinton, La | 39 80 |
| | | $2,523 25 |

Claims proved..... $8,887 96. Pro rata division, $15\frac{26}{32}$ per ct.
Do. not proved.... 2,523 25

$11,411 21. " " $12\frac{11}{12}$ per ct.

New Orleans, March 12th, 1852.
(Signed) O. E. WILCOX,
*Syndic.*

*Affidavit of proof of publication of syndic's tableau.*—Filed 27th April, 1852.

STATE OF LOUISIANA,
*Third District Court of New Orleans.*

CHARLES C. LATHROP
vs.
HIS CREDITORS, &c.

F. Goudon, being duly sworn, says that he has carefully examined the files of the New Orleans Bee, a newspaper published in the city of New Orleans in English and French, and that the notices for the homologation of the tableau of distribution in the above case have been published in said newspaper, in English and French, on the 15th, 20th, and 24th April, 1852.

Sworn to and subscribed in open Court this 27th April, 1852.
(Signed) F. GOUDON.
(Signed) LOUIS R. COURTIN,
*D'y Clerk.*

*Order and Judgment.*

On motion of J. Van Matre & T. A. Clarke, atty's for Owen E. Wilcox, syndic of the creditors herein, and on showing to the Court that due and legal notice of the filing of the tableau of distribution in this case has been given in the manner pointed out by law, and that no opposition has been filed thereto, it is ordered that said tableau be approved and homologated, and the funds distributed in accordance therewith.

Judgment rendered 27th April, 1852; signed 1st May, 1852.
(Signed) T. H. KENNEDY,
*Judge.*

STATE OF LOUISIANA,
*Third District Court of New Orleans:*

I, William Joseph Castall, Clerk of the Third District Court of New

Orleans, do hereby certify, that the foregoing 22 pages do contain true copies of the originals of record, in the matter of the insolvency of Charles C. Lathrop vs. his creditors, and the creditors of the late firm of C. C. Lathrop & Co., Lathrop, Knox & Co., and Lathrop & Co., instituted in this Court, and now on the records thereof, under the No. 3485.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said Court, at the City of New Orleans, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty-four, and the seventy-ninth year of the independence of the United States of America.

W. J. CASTELL, [SEAL.]
*Clerk.*

*Minutes.*—November Term, 1854.

NEW ORLEANS, 16 *Nov.*, 1854.

Present, Hon. J. A. Campbell, Presiding Judge; T. H. McCaleb, District Judge.

CHARLES JUDSON
vs.
C. C. LATHROP. } 2332.

This cause came on to be heard, and was argued by Messrs. Ogden & Bradford for the plaintiff, and by Messrs. Van Matre & Roselius for defendant, and submitted to the Court.

*Opinion of the Court.*—Delivered by Hon. J. A. Campbell, 17th Nov., 1854.

This suit was commenced to recover the amount of a judgment rendered by the Supreme Court of Louisiana, in June, A. D. 1851, for one thousand eight hundred and ten dollars, and interest from the 2d May A. D., 1845.

The defendant resists a judgment in this Court, for the reasons that the debt of the plaintiff has already been reduced to judgment, and that this suit is a double vexation; and 2dly, that the defendant, in February, 1851, made a cession of his goods to his creditors, which was accepted by them and the proper Court, and that a syndic was appointed, and legal administration had. That the plaintiff was represented by an attorney appointed for absent creditors, and his claim was placed on the bilan and tableau of distribution. That the debt was originally a Louisiana debt, and that the plaintiff is bound by the proceedings of insolvency. This Court has already overruled the exception to the right of the party to maintain a suit upon a judgment in the State Court. The right to do so is well established at the common law, and is

recognized in the code of practice and reports of this State. C. P., 886; 4 Rob. R., 274

The debt of the plaintiff was contracted with a firm which had carried on business in New York, and the domicil of whose members, at the date of the contract, was there.

The debt originated in the failure of the defendant to pay over collections he had made on their account. The money was payable to the firm there; the debt was a New York debt.

Subsequently, the debt was surrendered in bankruptcy in New Orleans, and sold, under the order of the District Court, as a part of the assets of the creditor firm, one of whom had removed to this City. At that sale the plaintiff, a resident of New York, was returned as the purchaser, and has since reduced the debt to judgment in his own name. There is no averment in the answer, that the plaintiff was not a bona fide purchaser, but he is treated in the answer as the owner; nor is there any evidence showing that this was a colorable transaction, of which a citizen of Louisiana has the beneficial interest. The plaintiff must be regarded as the owner of the judgment which stands in his name; nor does the fact that the judgment was recovered in one of the Courts of this State submit the plaintiff to the jurisdiction of another Court exercising a jurisdiction upon a subject matter wholly different.

The Court is of opinion that the plaintiff is entitled to judgment.

*Judgment.*—November Term.

NEW ORLEANS, 17th November, 1854.

Present, Hon. J. A. Campbell, Presiding Judge; T. H. Mc Caleb, District Judge.

CHARLES JUDSON
vs.
C. C. LATHROP. } 2332.

This cause came on to be heard at this term, and was argued by counsel. On consideration whereof, it is now ordered, adjudged, and decreed, that the plaintiff, Charles Judson, do have and recover judgment against the defendant, C. C. Lathrop, for the sum of eighteen hundred and ten dollars and fifty cents, with interest thereon at the rate of five per cent. per annum, from the 2d May, 1845, until paid, and for costs of suit.

Judgment rendered 17th Nov., 1854.
" signed 22d Nov., 1854.

THEO. H. McCALEB, [SEAL.]
*U. S. Judge.*

*Petition for writ of error.*—Filed 1st Dec'r, 1854.

To the Hon. the Judges of the Circuit Court of the United States in and for the Fifth Circuit, holding sessions in New Orleans:

The petition of Charles C. Lathrop, of New Orleans, respectfully represents, that a final judgment was rendered in this Hon. Court, on the 17th day of November, 1854, in the suit of Charles Judson, of New York, against your petitioner; whereby your petitioner was condemned to pay to the said Charles Judson, the sum of eighteen hundred and ten dollars and fifty cents, with interest thereon, at the rate of five per cent. per annum, from the 2d day of May, 1845, until paid, and costs of suit. That petitioner believes himself to be aggrieved by said judgment, and is informed and believes that there is error therein, as well as in the judgment previously rendered in said suit, overruling the exception filed therein by said defendant, and is desirous that said judgments be reviewed and passed upon by the Supreme Court of the United States.

Wherefore, petitioner prays that, upon his execution of a bond, with security, in such sum as this Hon. Court may require in favor of the said plaintiff, conditioned as the law directs, a writ of error staying execution on said judgment may be allowed him from said judgments to the Hon. the Supreme Court of the United States, returnable therein at the next term thereon, and according to law; and also for general relief.

J. VAN MATRE,
*Att'y for Defd't.*

*Minutes.*—November Term, 1854.

NEW ORLEANS, Friday, 1st Dec'r, 1854.

Present, Hon. T. H. McCaleb, Dis't Judge.
Absent, Hon. J. A. Campbell, Presiding Judge.

*Order allowing writ of error.*

CHARLES JUDSON
vs.
C. C. LATHROP. } 2332.

On motion of J. Van Matre, of counsel for defendant, and on his presenting and filing the petition of the said defendant, representing that he is aggrieved by the judgment herein rendered against him, and is desirous of appealing therefrom, it is ordered that a writ of error be allowed said defendant as prayed for, the same to operate as a super sedeas on said defendant's giving bond, conditioned according to law, with good and solvent security, in the penal sum of four thousand and seventy-four dollars; the said writ to be returnable to the next term of the Supreme Court of the United States.

*Bond for writ of error.*—Filed 4th Dec'r, 1854.

Know all men by these presents, that we, C. C. Lathrop as

principal, and Christian Roselius as surety, are held and firmly bound unto Charles Judson in the full and just sum of four thousand and seventy-four dollars to be paid to the said Charles Judson, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this fourth day of December, in the year of our Lord eighteen hundred and fifty-four.

Whereas lately, at a Circuit Court of the United States, Fifth Judicial Circuit, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Circuit Court, wherein Charles Judson is plaintiff, and C. C. Lathrop is defendant, judgment was rendered against the said C. C. Lathrop, defendant, and the said C. C. Lathrop having obtained a writ of error, and filed a copy thereon in the Clerk's Office of the said Circuit Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles Judson, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such, that if the said C. C. Lathrop shall prosecute his writ to effect and answer such judgment as may be rendered against him by said Supreme Court, and all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

C. C. LATHROP,
C. ROSELIUS, [SEAL.]

UNITED STATES OF AMERICA,
*Circuit Court of the United States:*

Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.—I, John W. Gurley, clerk of the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana, do hereby certify, that the foregoing 77 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, on the trial the *the* case of Charles Judson vs. C. C. Lathrop, No. 2332 of the Docket, so far as the same now remain of record or on file in said Court.

[SEAL.] Witness my hand and the seal of said Court, at the City of New Orleans, this 2nd day of August, A. D. 1855.

J. W. GURLEY,
*Clerk.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable the Judges of the Circuit Court of the United States in and for the Fifth Circuit, and holding sessions for the Eastern District of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or one of you, between Charles Judson and C. C. Lathrop, a manifest error hath happened, to the great damage of the said C. C. Lathrop, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this fourth of December, in the year of our Lord one thousand eight hundred and fifty-four.

J. W. GURLEY,
*Clerk of the United States Circuit Court*
*for Eastern District of Louisiana.*

UNITED STATES OF AMERICA.

The President of the United States, to Charles Judson, greeting:

You are hereby cited and admonished to be as appear at a Supreme Court of the United States, to be holden at the City of Washington on the first Monday of December next, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, wherein C. C. Lathrop is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this fourth day of December, in the year of our Lord one thousand eight hundred and fifty-four.

THEO. H. McCALEB,
*U. S. Judge.*

*Marshal's return.*

Received December 5th, '54, and on the 6th day of December, 1854, I served a copy of the within citation in error on Charles Judson, by delivering a copy thereof personally to Henry Ogden, esq., in the City of New Orleans; the said Henry Ogden being the attorney of record for the said Charles Judson.

Received said copy and accepted service of this citation for said *said* client, Charles Judson, and returned Dec'r 7th, 1854.

EMILIE MAY,
*D'y Marshal.*